STATE OF MICHIGAN

COURT OF APPEALS

MELISSA L. CUMMINGS,

Plaintiff-Appellant,

v

CORRIGAN OIL COMPANY and ELDRED LILLIE, III,

Defendants-Appellees.

UNPUBLISHED
June 10, 2003

No. 236929
Livingston Circuit Court
LC No. 99-17113-NI

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in this automobile negligence action.[1] We affirm.

At approximately 10:00 p.m. on March 10, 1999, defendant Lillie was operating a tanker truck to deliver heating oil to a residence at 1640 County Farm Road, a two-lane blacktop road without a posted speed limit. The road in approaching the residence has a hill, and the two driveways for the residence are on the decline of the hill. The driveway was unpaved. Lillie slowed his truck down to three to four miles per hour to turn right into the southernmost driveway. After traversing the crest of the hill, plaintiff's vehicle, which was traveling approximately fifty miles per hour, collided with the rear of the truck. Plaintiff sued Lillie and his employer, Corrigan Oil Company, on a negligence theory.

Defendants moved for summary disposition, arguing that Michigan law, which demands that a following vehicle maintain an assured clear distance in which to stop, and which presumes the liability of the following vehicle in the event of a rear end collision, shielded them from liability. Defendants also argued that Lillie did not have a duty to avoid use of a driveway accessible to a public road. In response, plaintiff asserted that she had neither the time nor the distance in which to stop her vehicle and that Lillie had a duty to anticipate that a vehicle would approach the crest of the hill at a speed of fifty-five miles per hour and be unable to stop in time to avoid a collision. The trial court granted summary disposition in favor of defendants, explaining that there was no evidence that "the driver [Lillie] did anything wrong."

[1] The trial court also granted summary disposition in favor of Livingston County Road Commission.

This Court reviews de novo the trial court's summary disposition ruling. In considering a motion made pursuant to MCR 2.116(C)(10), which tests the factual support of a plaintiff's claim, we consider in a light most favorable to the plaintiff the pleadings, affidavits, and other documentary evidence to determine whether a genuine issue of material fact exists to warrant a trial. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A person driving behind a vehicle, such as the plaintiff in this case, has a duty to travel at a speed and distance behind the other motorist that will allow them to stop within a clear distance ahead. MCL 257.627(1). Any motorist who collides with the rear end of another vehicle traveling in the same direction is presumed negligent, although that presumption is rebuttable. MCL 257.402(a).

In *Hill v Wilson*, 209 Mich App 356; 531 NW2d 744 (1995), this Court concluded that the presumption of negligence within subsection 402(a) entitled the defendant driver to summary disposition of the action brought by the plaintiff, who had crashed into the rear of the defendant's vehicle.[2] *Id.* at 359-361. The Court reasoned "that it is a 'proper activity' of a motorist to slow down or brake for objects that enter the roadway ahead," and that the plaintiff bore responsibility for the accident because "any motorist in heavy traffic should anticipate that unexpected events may cause drivers ahead to slow down or stop." *Id.* at 361.

We find that the trial court properly granted summary disposition in favor of defendants because the undisputed underlying facts, like the facts in *Hill, supra*, do not raise a reasonable inference of defendants' negligence. Slowing a vehicle to make a turn into a driveway is a proper activity for a motorist and should be anticipated by other drivers. Questions concerning whether Lillie stopped or merely slowed, whether he had his four-way flashers on, or whether there was another driveway that led to the residence are of no import. Plaintiff's vision was admittedly limited because of the grade of the road, and plaintiff had a statutory duty to not drive at a speed greater than that which will allow him to stop within the assured, clear distance ahead. MCL 257.627(1). Giving every benefit of the doubt to the nonmoving part, no record could be developed in this case on which reasonable minds might differ. Summary disposition was properly granted in this case.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell

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[2] A family of ducks crossed the road both in front of defendant's car and in front of the car ahead of defendant's. The defendant slowed to avoid both the car in front of her and the ducks in front of her.